UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,084	01/24/2002	Ananthanarayan Venkateswaran	AA414M	1661

27752 7590 12/02/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
LAMM, MARINA	

ART UNIT	PAPER NUMBER
1616	8

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/048,084	VENKATESWARAN ET AL.	
	Examiner	Art Unit	
	Marina Lamm	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 September 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,6 and 8-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,6 and 8-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Acknowledgment is made of the amendment and application data sheet filed 9/17/03. Claims pending are 1-3, 6 and 8-14. Claims 4, 5 and 7 have been cancelled. Claims 1-3 have been amended.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3, 6 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsumatsu.

Mitsumatsu teaches hair care compositions such as conditioner, treatment, mousse, etc., containing the claimed amounts of cetyl hydroxyethylcellulose (e.g. POLYSURF 67), high melting point fatty alcohols (e.g. cetyl, stearyl and/or behenyl alcohol), lauryl methyl gluceth-10 hydroxypropyl-dimonium chloride, polyoxyethylene glycol, silicone emulsion and pentaerythriol tetraisostearate in an aqueous carrier. See Examples 12 and 14 on pp. 54-55. The reference also teaches that the compositions may contain cationic cellulose polymers such as Polyquternium 24, polypropylene glycols, hydroxyethyl cellulose and other rheology modifiers, and amidoamines in combination with an acid. See p. 19, line 22 – p. 20, line 11; p. 24, lines 5-24; p. 47, lines 13-30; p. 50, lines 7-12. With respect to Claim 13, Mitsumatsu teaches mixing fatty alcohols and emulsifiers with aqueous carrier at temperature of above 60^0C. After cooling down to below 50^0C, the remaining components (including cetyl hydroxyethylcellulose) are added. See p. 51, lines 5-32. Although the Mitsumatsu reference does not exemplify the claimed combination of ingredients (a), (b), (c), (d) with cationic

cellulose polymers, polypropylene glycols, rheology modifiers and/or amidoamines, it fully discloses all the elements of the instant invention. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to employ cationic cellulose polymers and/or amidoamines in the compositions of Examples 12 or 14 of Mitsumatsu for their art-recognized purpose and with a reasonable expectation of beneficial results such as additional hair conditioning effect as suggested by Mitsumatsu. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to employ polypropylene glycols in the compositions of Examples 12 or 14 of Mitsumatsu for their art-recognized purpose and with a reasonable expectation of beneficial results such as imparting a soft and moist feeling to the hair as suggested by Mitsumatsu. It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to employ hydroxyethyl cellulose or other rheology modifiers in the compositions of Examples 12 or 14 of Mitsumatsu for their art-recognized purpose and with a reasonable expectation of beneficial results such as imparting gel-like viscosity to the compositions as suggested by Mitsumatsu. With respect to Claim 14, the Mitsumatsu reference teaches applying the hair conditioning compositions to the hair.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

3. The 102 rejections of Claims 1-3 and 8-14 over Mitsumatsu and Claims 1-3 and 14 over Coffindaffer et al. or Murray are withdrawn in view of the Applicant's amendment of Claims 1-3.

4. Applicant's arguments with respect to the 103 rejection over Mitsumatsu have been fully considered but they are not persuasive.

In response to Applicant's argument that there is no suggestion to modify the Mitsumatsu reference (see p. 13 of the response), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to employ cationic cellulose polymers, polypropylene glycols, rheology modifiers and/or amidoamines is found in the Mitsumatsu reference. Thus, Mitsumatsu teaches these compounds and states that "[t]he components and their levels are selected by one skilled in the art depending on the desired characteristics of the product." See p. 25, lines 25-33. Further, Mitsumatsu suggests that cationic cellulose polymers and/or amidoamines provide hair conditioning effect; polypropylene glycols impart a soft and moist feeling to the hair; and hydroxyethyl cellulose or other rheology modifiers impart gel-like viscosity to the compositions. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the exemplified compositions 12 or 14 of Mitsumatsu such that to employ additional ingredients such as cationic cellulose polymers, polypropylene glycols, rheology modifiers and/or amidoamines for their art recognized purpose. One having ordinary skill in the art would have been motivated to do this to obtain desired characteristics of the products as suggested by Mitsumatsu.

Further, the Applicant argues that "even if a *prima facie* case was established, the obviousness argument is overcome by Applicants' showing of unexpected results, i.e. providing surprising hair volume-up benefits while not compromising basic conditioning benefits." See p. 13 of the response. In response, the Applicant did not point and the Examiner was not able to find in the specification (or in any filed correspondence) a clear showing of unexpected results commensurate in scope with the claimed invention.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml
11/20/03

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600